

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 632

Representative McGregor, J.

—

A B I L L

To amend sections 303.213, 519.213, 713.081, 1506.11, 1
4906.13, 4906.20, 4906.98, 5751.01, and 5751.20 of 2
the Revised Code and to enact sections 1506.111, 3
1506.112, and 4906.21 of the Revised Code to 4
require the Director of Natural Resources to 5
establish a plan to make available for lease areas 6
of the bed of Lake Erie for the purpose of wind 7
energy development and to require Lake Erie wind 8
farms to be certified by the Power Siting Board. 9

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 303.213, 519.213, 713.081, 1506.11, 10
4906.13, 4906.20, 4906.98, 5751.01, and 5751.20 be amended and 11
sections 1506.111, 1506.112, and 4906.21 of the Revised Code be 12
enacted to read as follows: 13

Sec. 303.213. (A) As used in this section, "small wind farm" 14
means wind turbines and associated facilities that are 15
interconnected with a medium voltage power collection system and 16
communications network and are designed for, or capable of, 17
operation at an aggregate capacity of less than five megawatts. 18

(B) Notwithstanding division (A) of section 303.211 of the 19
Revised Code, sections 303.01 to 303.25 of the Revised Code confer 20

power on a board of county commissioners or board of zoning 21
appeals to adopt zoning regulations governing the location, 22
erection, construction, reconstruction, change, alteration, 23
maintenance, removal, use, or enlargement of any small wind farm, 24
whether publicly or privately owned, or the use of land for that 25
purpose, which regulations may be more strict than the regulations 26
prescribed in rules adopted under division ~~(C)(2)(B)~~ of section 27
~~4906.20~~ 4906.21 of the Revised Code. 28

(C) The designation under this section of a small wind farm 29
as a public utility for purposes of sections 303.01 to 303.25 of 30
the Revised Code shall not affect the classification of a small 31
wind farm for purposes of state or local taxation. 32

(D) Nothing in division (C) of this section shall be 33
construed as affecting the classification of a telecommunications 34
tower as defined in division (B) or (E) of section 303.211 of the 35
Revised Code or any other public utility for purposes of state and 36
local taxation. 37

Sec. 519.213. (A) As used in this section, "small wind farm" 38
means wind turbines and associated facilities with a single 39
interconnection to the electrical grid and designed for, or 40
capable of, operation at an aggregate capacity of less than five 41
megawatts. 42

(B) Notwithstanding division (A) of section 519.211 of the 43
Revised Code, sections 519.02 to 519.25 of the Revised Code confer 44
power on a board of township trustees or board of zoning appeals 45
with respect to the location, erection, construction, 46
reconstruction, change, alteration, maintenance, removal, use, or 47
enlargement of any small wind farm, whether publicly or privately 48
owned, or the use of land for that purpose, which regulations may 49
be more strict than the regulations prescribed in rules adopted 50
under division (B)~~(2)~~ of section ~~4906.20~~ 4906.21 of the Revised 51

Code. 52

(C) The designation under this section of a small wind farm 53
as a public utility for purposes of sections 519.02 to 519.25 of 54
the Revised Code shall not affect the classification of a small 55
wind farm or any other public utility for purposes of state or 56
local taxation. 57

(D) Nothing in division (C) of this section shall be 58
construed as affecting the classification of a telecommunications 59
tower as defined in division (B) or (E) of section 519.211 of the 60
Revised Code or any other public utility for purposes of state and 61
local taxation. 62

Sec. 713.081. (A) As used in this section, "small wind farm" 63
means wind turbines and associated facilities with a single 64
interconnection to the electrical grid and designed for, or 65
capable of, operation at an aggregate capacity of less than five 66
megawatts. 67

(B) Sections 713.06 to 713.15 of the Revised Code confer 68
power on the legislative authority of a municipal corporation with 69
respect to the location, erection, construction, reconstruction, 70
change, alteration, maintenance, removal, use, or enlargement of 71
any small wind farm as a public utility, whether publicly or 72
privately owned, or the use of land for that purpose, which 73
regulations may be more strict than the regulations prescribed in 74
rules adopted under division (B)~~(2)~~ of section ~~4906.20~~ 4906.21 of 75
the Revised Code. 76

(C) The designation under this section of a small wind farm 77
as a public utility for purposes of sections 713.06 to 713.15 of 78
the Revised Code shall not affect the classification of a small 79
wind farm or any other public utility for purposes of state or 80
local taxation. 81

Sec. 1506.11. (A) "Territory," as used in this section, means 82
the waters and the lands presently underlying the waters of Lake 83
Erie and the lands formerly underlying the waters of Lake Erie and 84
now artificially filled, between the natural shoreline and the 85
international boundary line with Canada. 86

(B) Whenever the state, acting through the director of 87
natural resources, upon application of any person who wants to 88
develop or improve part of the territory, and after notice that 89
the director, at the director's discretion, may give as provided 90
in this section, determines that any part of the territory can be 91
developed and improved or the waters thereof used as specified in 92
the application without impairment of the public right of 93
navigation, water commerce, and fishery, a lease of all or any 94
part of the state's interest therein may be entered into with the 95
applicant, or a permit may be issued for that purpose, subject to 96
the powers of the United States government and in accordance with 97
rules adopted by the director in accordance with Chapter 119. of 98
the Revised Code, and without prejudice to the littoral rights of 99
any owner of land fronting on Lake Erie, provided that the 100
legislative authority of the municipal corporation within which 101
any such part of the territory is located, if the municipal 102
corporation is not within the jurisdiction of a port authority, or 103
the county commissioners of the county within which such part of 104
the territory is located, excluding any territory within a 105
municipal corporation or under the jurisdiction of a port 106
authority, or the board of directors of a port authority with 107
respect to such part of the territory included in the jurisdiction 108
of the port authority, has enacted an ordinance or resolution 109
finding and determining that such part of the territory, described 110
by metes and bounds or by an alternate description referenced to 111
the applicant's upland property description that is considered 112
adequate by the director, is not necessary or required for the 113

construction, maintenance, or operation by the municipal 114
corporation, county, or port authority of breakwaters, piers, 115
docks, wharves, bulkheads, connecting ways, water terminal 116
facilities, and improvements and marginal highways in aid of 117
navigation and water commerce and that the land uses specified in 118
the application comply with regulation of permissible land use 119
under a waterfront plan of the local authority. 120

(C) Upon the filing of the application with the director, the 121
director may hold a public hearing thereon and may cause written 122
notice of the filing to be given to any municipal corporation, 123
county, or port authority, as the case may be, in which such part 124
of the territory is located and also shall cause public notice of 125
the filing to be given by advertisement in a newspaper of general 126
circulation within the locality where such part of the territory 127
is located. If a hearing is to be held, public notice of the 128
filing may be combined with public notice of the hearing and shall 129
be given once a week for four consecutive weeks prior to the date 130
of the initial hearing. All hearings shall be before the director 131
and shall be open to the public, and a record shall be made of the 132
proceeding. Parties thereto are entitled to be heard and to be 133
represented by counsel. The findings and order of the director 134
shall be in writing. All costs of the hearings, including 135
publication costs, shall be paid by the applicant. The director 136
also may hold public meetings on the filing of an application. 137

If the director finds that a lease may properly be entered 138
into with the applicant or a permit may properly be issued to the 139
applicant, the director shall determine the consideration to be 140
paid by the applicant, which consideration shall exclude the value 141
of the littoral rights of the owner of land fronting on Lake Erie 142
and improvements made or paid for by the owner of land fronting on 143
Lake Erie or that owner's predecessors in title. The lease or 144
permit may be for such periods of time as the director determines. 145

The rentals received under the terms of such a lease or permit 146
shall be paid into the state treasury to the credit of the Lake 147
Erie submerged lands fund, which is hereby created, and shall be 148
distributed from that fund as follows: 149

(1) Fifty per cent of each rental shall be paid to the 150
department of natural resources for the administration of this 151
section and section 1506.10 of the Revised Code and for the 152
coastal management assistance grant program required to be 153
established under division (C) of section 1506.02 of the Revised 154
Code; 155

(2) Fifty per cent of each rental shall be paid to the 156
municipal corporation, county, or port authority making the 157
finding provided for in this section. 158

All leases and permits shall be executed in the manner 159
provided by section ~~5501.01~~ 5301.01 of the Revised Code and shall 160
contain, in addition to the provisions required in this section, a 161
reservation to the state of all mineral rights and a provision 162
that the removal of any minerals shall be conducted in such manner 163
as not to damage any improvements placed by the littoral owner, 164
lessee, or permit holder on the lands. No lease or permit of the 165
lands defined in this section shall express or imply any control 166
of fisheries or aquatic wildlife now vested in the division of 167
wildlife of the department. 168

(D) Upland owners who, prior to October 13, 1955, have 169
erected, developed, or maintained structures, facilities, 170
buildings, or improvements or made use of waters in the part of 171
the territory in front of those uplands shall be granted a lease 172
or permit by the state upon the presentation of a certification by 173
the chief executive of a municipal corporation, resolution of the 174
board of county commissioners, or resolution of the board of 175
directors of the port authority establishing that the structures, 176
facilities, buildings, improvements, or uses do not constitute an 177

unlawful encroachment on navigation and water commerce. The lease 178
or permit shall specifically enumerate the structures, facilities, 179
buildings, improvements, or uses so included. 180

(E) Persons having secured a lease or permit under this 181
section are entitled to just compensation for the taking, whether 182
for navigation, water commerce, or otherwise, by any governmental 183
authority having the power of eminent domain, of structures, 184
facilities, buildings, improvements, or uses erected or placed 185
upon the territory pursuant to the lease or permit or the littoral 186
rights of the person and for the taking of the leasehold and the 187
littoral rights of the person pursuant to the procedure provided 188
in Chapter 163. of the Revised Code. The compensation shall not 189
include any compensation for the site in the territory except to 190
the extent of any interest in the site theretofore acquired by the 191
person under this section or by prior acts of the general assembly 192
or grants from the United States government. The failure of any 193
person to apply for or obtain a lease or permit under this section 194
does not prejudice any right the person may have to compensation 195
for a taking of littoral rights or of improvements made in 196
accordance with a lease, a permit, or littoral rights. 197

(F) If any taxes or assessments are levied or assessed upon 198
property that is the subject of a lease or permit under this 199
section, the taxes or assessments are the obligation of the lessee 200
or permit holder. 201

(G) If a lease or permit secured under this section requires 202
the lessee or permit holder to obtain the approval of the 203
department or any of its divisions for any changes in structures, 204
facilities, or buildings, for any improvements, or for any changes 205
or expansion in uses, no lessee or permit holder shall change any 206
structures, facilities, or buildings, make any improvements, or 207
expand or change any uses unless the director first determines 208
that the proposed action will not adversely affect any current or 209

prospective exercise of the public right of recreation in the 210
territory and in the state's reversionary interest in any 211
territory leased or permitted under this section. 212

Proposed changes or improvements shall be deemed to 213
"adversely affect" the public right of recreation if the changes 214
or improvements cause or will cause any significant demonstrable 215
negative impact upon any present or prospective recreational use 216
of the territory by the public during the term of the lease or 217
permit or any renewals and of any public recreational use of the 218
leased or permitted premises in which the state has a reversionary 219
interest. 220

(H) This section does not apply to leases entered into under 221
section 1506.111 of the Revised Code. 222

Sec. 1506.111. (A) The director of natural resources shall 223
make available for leasing in accordance with rules adopted under 224
division (B) of this section the bed of Lake Erie for purposes of 225
wind energy development. 226

(B) For purposes of leasing the bed of Lake Erie for wind 227
energy development, the director shall adopt rules in accordance 228
with Chapter 119. of the Revised Code that do all of the 229
following: 230

(1) Establish a map designating the areas of the bed of Lake 231
Erie that may be leased for wind energy development. The rules 232
shall ensure that the areas that may be leased are concentrated in 233
the central and eastern portion of Lake Erie, avoid development in 234
nearshore areas, avoid sea lanes, and avoid areas of Lake Erie 235
where migratory birds are concentrated. 236

(2) Provide that leases granted for wind energy development 237
under this section include the requirement that each designated 238
area of Lake Erie subject to a lease shall have access to and 239

shall allow other leaseholders access to a connection to the 240
electrical grid directly or through an easement or other similar 241
legal interest. 242

(3) Determine minimum standards for the technology used to 243
construct wind farms on and transmit electricity from the areas of 244
Lake Erie leased for that purpose; 245

(4) Provide for a study of the environmental impact of wind 246
energy development on the areas of Lake Erie eligible for leases 247
under this section that meets the requirements for certification 248
pursuant to section 4906.21 of the Revised Code; 249

(5) Establish application procedures for and requirements 250
governing a lease of the bed of Lake Erie; 251

(6) Establish the consideration to be paid by a lessee, which 252
shall be at a nominal rate; 253

(7) Require that a lessee pay any taxes or assessments levied 254
or assessed on the property that is the subject of the lease; 255

(8) Require that a lease be executed in the manner provided 256
by section 5301.01 of the Revised Code; 257

(9) Establish any other requirements that the director 258
determines are necessary to implement or administer this section. 259

(C) The rentals received under the terms of a lease entered 260
into under this section shall be paid into the state treasury to 261
the credit of the Lake Erie wind development fund created in 262
section 1506.112 of the Revised Code. 263

Sec. 1506.112. The Lake Erie wind development fund is hereby 264
created in the state treasury. The fund shall consist of the 265
proceeds of all lease payments made to the department of natural 266
resources under section 1506.111 of the Revised Code. The 267
department shall use the fund to pay for the administration of 268
section 1506.111 of the Revised Code and may use the fund, to the 269

extent money is available in the fund, to pay for the capital and 270
operating costs of the department. All investment earnings of the 271
fund shall be credited to the fund. 272

Sec. 4906.13. (A) As used in this section and sections 273
4906.20, 4906.21, and 4906.98 of the Revised Code, ~~"economically:~~ 274

(1) "Economically significant wind farm" means wind turbines 275
and associated facilities with a single interconnection to the 276
electrical grid and designed for, or capable of, operation at an 277
aggregate capacity of five or more megawatts but less than fifty 278
megawatts. The term excludes any such wind farm in operation on 279
~~the effective date of this section~~ June 24, 2008 and Lake Erie 280
wind farms. 281

(2) "Lake Erie wind farm" means wind turbines and associated 282
facilities with a single interconnection to the electrical grid 283
operated using the bed of Lake Erie pursuant to a lease authorized 284
under section 1506.111 of the Revised Code. 285

(B) No public agency or political subdivision of this state 286
may require any approval, consent, permit, certificate, or other 287
condition for the construction or initial operation of a major 288
utility facility ~~or,~~ economically significant wind farm, or Lake 289
Erie wind farm authorized by a certificate issued pursuant to 290
Chapter 4906. of the Revised Code. Nothing herein shall prevent 291
the application of state laws for the protection of employees 292
engaged in the construction of such facility or wind ~~farm~~ farms 293
nor of municipal regulations that do not pertain to the location 294
or design of, or pollution control and abatement standards for, a 295
major utility facility or ~~economically significant~~ wind farm for 296
which a certificate has been granted under this chapter. 297

Sec. 4906.20. (A) No person shall commence to construct an 298
economically significant wind farm in this state or a Lake Erie 299

~~wind farm~~ without first ~~having obtained~~ obtaining a certificate 300
from the power siting board. ~~An economically significant~~ issued 301
pursuant to the rules adopted under section 4906.21 of the Revised 302
Code. A wind farm with respect to which such a certificate is 303
required shall be constructed, operated, and maintained in 304
conformity with that certificate and any terms, conditions, and 305
modifications it contains. ~~A certificate shall be issued only~~ 306
~~pursuant to this section.~~ The certificate may be transferred, 307
subject to the approval of the board, to a person that agrees to 308
comply with those terms, conditions, and modifications. 309

~~(B) The board shall adopt rules governing the certificating~~ 310
~~of economically significant wind farms under this section. Initial~~ 311
~~rules shall be adopted within one hundred twenty days after this~~ 312
~~section's effective date.~~ 313

~~(1) The rules shall provide for an application process for~~ 314
~~certificating economically significant wind farms that is~~ 315
~~identical to the extent practicable to the process applicable to~~ 316
~~certificating major utility facilities under sections 4906.06,~~ 317
~~4906.07, 4906.08, 4906.09, 4906.11, and 4906.12 of the Revised~~ 318
~~Code and shall prescribe a reasonable schedule of application~~ 319
~~filing fees structured in the manner of the schedule of filing~~ 320
~~fees required for major utility facilities.~~ 321

~~(2) Additionally, the rules shall prescribe reasonable~~ 322
~~regulations regarding any wind turbines and associated facilities~~ 323
~~of an economically significant wind farm, including, but not~~ 324
~~limited to, their location, erection, construction,~~ 325
~~reconstruction, change, alteration, maintenance, removal, use, or~~ 326
~~enlargement and including erosion control, aesthetics,~~ 327
~~recreational land use, wildlife protection, interconnection with~~ 328
~~power lines and with regional transmission organizations,~~ 329
~~independent transmission system operators, or similar~~ 330

~~organizations, ice throw, sound and noise levels, blade shear, shadow flicker, decommissioning, and necessary cooperation for site visits and enforcement investigations. The rules also shall prescribe a minimum setback for a wind turbine of an economically significant wind farm. That minimum shall be equal to a horizontal distance, from the turbine's base to the property line of the wind farm property, equal to one and one-tenth times the total height of the turbine structure as measured from its base to the tip of its highest blade and be at least seven hundred fifty feet in horizontal distance from the tip of the turbine's nearest blade at ninety degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the certification application. The setback shall apply in all cases except those in which all owners of property adjacent to the wind farm property waive application of the setback to that property pursuant to a procedure the board shall establish by rule and except in which, in a particular case, the board determines that a setback greater than the minimum is necessary.~~

(C) The board shall approve, or may modify and approve, an application for ~~economically significant~~ wind farm certification if it finds that the construction, operation, and maintenance of the ~~economically significant~~ wind farm will comply with the rules adopted under ~~division (B) of this section~~ 4906.21 of the Revised Code. The certificate shall be conditioned upon the ~~economically significant~~ wind farm complying with rules adopted under section 4561.32 of the Revised Code.

Sec. 4906.21. The power siting board shall adopt rules governing the certificating of economically significant wind farms and Lake Erie wind farms under section 4906.20 of the Revised Code. Initial rules for economically significant wind farms shall be adopted within one hundred twenty days after June 24, 2008.

Initial rules for Lake Erie wind farms shall be adopted within one 363
hundred twenty days after the effective date of this section. 364

365

(A) The rules shall provide for an application process for 366
certificating the wind farms that is identical to the extent 367
practicable to the process applicable to certificating major 368
utility facilities under sections 4906.06, 4906.07, 4906.08, 369
4906.09, 4906.11, and 4906.12 of the Revised Code and shall 370
prescribe a reasonable schedule of application filing fees 371
structured in the manner of the schedule of filing fees required 372
for major utility facilities. 373

(B) With respect to wind turbines and associated facilities 374
of an economically significant wind farm, the rules shall 375
prescribe reasonable regulations, including regulations addressing 376
their location, erection, construction, reconstruction, change, 377
alteration, maintenance, removal, use, or enlargement and 378
including erosion control, aesthetics, recreational land use, 379
wildlife protection, interconnection with power lines and with 380
regional transmission organizations, independent transmission 381
system operators, or similar organizations, ice throw, sound and 382
noise levels, blade shear, shadow flicker, decommissioning, and 383
necessary cooperation for site visits and enforcement 384
investigations. The rules also shall prescribe a minimum setback 385
for a wind turbine. That minimum shall be equal to a horizontal 386
distance, from the turbine's base to the property line of the wind 387
farm property, equal to one and one-tenth times the total height 388
of the turbine structure as measured from its base to the tip of 389
its highest blade and be at least seven hundred fifty feet in 390
horizontal distance from the tip of the turbine's nearest blade at 391
ninety degrees to the exterior of the nearest, habitable, 392
residential structure, if any, located on adjacent property at the 393
time of the certification application. The setback requirement 394

shall apply in all cases except those in which all owners of 395
property adjacent to the wind farm property waive application of 396
the setback to that property pursuant to a procedure the board 397
shall establish by rule and except in which, in a particular case, 398
the board determines that a setback greater than the minimum is 399
necessary. 400

(C) With respect to wind turbines and associated facilities 402
of a Lake Erie wind farm, the rules shall prescribe reasonable 403
regulations that establish all of the following: 404

(1) Requirements that are consistent with the lease 405
provisions established for wind energy development pursuant to 406
division (B) of section 1506.111 of the Revised Code; 407

(2) Requirements regarding their location, erection, 408
construction, reconstruction, change, alteration, maintenance, 409
removal, use, and enlargement; 410

(3) Requirements regarding aesthetics, recreational use of 411
the lake, wildlife protection, interconnection with power lines 412
and with regional transmission organizations, independent 413
transmission system operators, or similar organizations, 414
decommissioning, and necessary cooperation for site visits and 415
enforcement investigations. 416

Sec. 4906.98. (A) No person shall construct a major utility 417
facility ~~or~~, economically significant wind farm, or Lake Erie wind 418
farm without first obtaining a certificate. 419

(B) No person shall construct, operate, or maintain a major 420
utility facility ~~or~~, economically significant wind farm, or Lake 421
Erie wind farm other than in compliance with the certificate the 422
person has obtained. 423

(C) No person ~~or~~, economically significant wind farm, or Lake 424

Erie wind farm shall fail to comply with any order issued pursuant 425
to this chapter or with a suspension otherwise required under 426
division (B) of section 4906.97 of the Revised Code. 427

Sec. 5751.01. As used in this chapter: 428

(A) "Person" means, but is not limited to, individuals, 429
combinations of individuals of any form, receivers, assignees, 430
trustees in bankruptcy, firms, companies, joint-stock companies, 431
business trusts, estates, partnerships, limited liability 432
partnerships, limited liability companies, associations, joint 433
ventures, clubs, societies, for-profit corporations, S 434
corporations, qualified subchapter S subsidiaries, qualified 435
subchapter S trusts, trusts, entities that are disregarded for 436
federal income tax purposes, and any other entities. "Person" does 437
not include nonprofit organizations or the state, its agencies, 438
its instrumentalities, and its political subdivisions. 439

(B) "Consolidated elected taxpayer" means a group of two or 440
more persons treated as a single taxpayer for purposes of this 441
chapter as the result of an election made under section 5751.011 442
of the Revised Code. 443

(C) "Combined taxpayer" means a group of two or more persons 444
treated as a single taxpayer for purposes of this chapter under 445
section 5751.012 of the Revised Code. 446

(D) "Taxpayer" means any person, or any group of persons in 447
the case of a consolidated elected taxpayer or combined taxpayer 448
treated as one taxpayer, required to register or pay tax under 449
this chapter. "Taxpayer" includes a Lake Erie wind energy 450
developer. "Taxpayer" does not include excluded persons. 451

(E) "Excluded person" means any of the following: 452

(1) Any person with not more than one hundred fifty thousand 453
dollars of taxable gross receipts during the calendar year. 454

Division (E)(1) of this section does not apply to a person that is 455
a member of a group that is a consolidated elected taxpayer or a 456
combined taxpayer; 457

(2) A public utility that paid the excise tax imposed by 458
section 5727.24 or 5727.30 of the Revised Code based on one or 459
more measurement periods that include the entire tax period under 460
this chapter, except that a public utility that is a combined 461
company is a taxpayer with regard to the following gross receipts: 462

(a) Taxable gross receipts directly attributed to a public 463
utility activity, but not directly attributed to an activity that 464
is subject to the excise tax imposed by section 5727.24 or 5727.30 465
of the Revised Code; 466

(b) Taxable gross receipts that cannot be directly attributed 467
to any activity, multiplied by a fraction whose numerator is the 468
taxable gross receipts described in division (E)(2)(a) of this 469
section and whose denominator is the total taxable gross receipts 470
that can be directly attributed to any activity; 471

(c) Except for any differences resulting from the use of an 472
accrual basis method of accounting for purposes of determining 473
gross receipts under this chapter and the use of the cash basis 474
method of accounting for purposes of determining gross receipts 475
under section 5727.24 of the Revised Code, the gross receipts 476
directly attributed to the activity of a natural gas company shall 477
be determined in a manner consistent with division (D) of section 478
5727.03 of the Revised Code. 479

As used in division (E)(2) of this section, "combined 480
company" and "public utility" have the same meanings as in section 481
5727.01 of the Revised Code. 482

(3) A financial institution, as defined in section 5725.01 of 483
the Revised Code, that paid the corporation franchise tax charged 484
by division (D) of section 5733.06 of the Revised Code based on 485

one or more taxable years that include the entire tax period under 486
this chapter; 487

(4) A dealer in intangibles, as defined in section 5725.01 of 488
the Revised Code, that paid the dealer in intangibles tax levied 489
by division (D) of section 5707.03 of the Revised Code based on 490
one or more measurement periods that include the entire tax period 491
under this chapter; 492

(5) A financial holding company as defined in the "Bank 493
Holding Company Act," 12 U.S.C. 1841(p); 494

(6) A bank holding company as defined in the "Bank Holding 495
Company Act," 12 U.S.C. 1841(a); 496

(7) A savings and loan holding company as defined in the 497
"Home Owners Loan Act," 12 U.S.C. 1467a(a)(1)(D) that is engaging 498
only in activities or investments permissible for a financial 499
holding company under 12 U.S.C. 1843(k); 500

(8) A person directly or indirectly owned by one or more 501
financial institutions, financial holding companies, bank holding 502
companies, or savings and loan holding companies described in 503
division (E)(3), (5), (6), or (7) of this section that is engaged 504
in activities permissible for a financial holding company under 12 505
U.S.C. 1843(k), except that any such person held pursuant to 506
merchant banking authority under 12 U.S.C. 1843(k)(4)(H) or 12 507
U.S.C. 1843(k)(4)(I) is not an excluded person, or a person 508
directly or indirectly owned by one or more insurance companies 509
described in division (E)(9) of this section that is authorized to 510
do the business of insurance in this state. 511

For the purposes of division (E)(8) of this section, a person 512
owns another person under the following circumstances: 513

(a) In the case of corporations issuing capital stock, one 514
corporation owns another corporation if it owns fifty per cent or 515
more of the other corporation's capital stock with current voting 516

rights; 517

(b) In the case of a limited liability company, one person 518
owns the company if that person's membership interest, as defined 519
in section 1705.01 of the Revised Code, is fifty per cent or more 520
of the combined membership interests of all persons owning such 521
interests in the company; 522

(c) In the case of a partnership, trust, or other 523
unincorporated business organization other than a limited 524
liability company, one person owns the organization if, under the 525
articles of organization or other instrument governing the affairs 526
of the organization, that person has a beneficial interest in the 527
organization's profits, surpluses, losses, or distributions of 528
fifty per cent or more of the combined beneficial interests of all 529
persons having such an interest in the organization; 530

(d) In the case of multiple ownership, the ownership 531
interests of more than one person may be aggregated to meet the 532
fifty per cent ownership tests in this division only when each 533
such owner is described in division (E)(3), (5), (6), or (7) of 534
this section and is engaged in activities permissible for a 535
financial holding company under 12 U.S.C. 1843(k) or is a person 536
directly or indirectly owned by one or more insurance companies 537
described in division (E)(9) of this section that is authorized to 538
do the business of insurance in this state. 539

(9) A domestic insurance company or foreign insurance 540
company, as defined in section 5725.01 of the Revised Code, that 541
paid the insurance company premiums tax imposed by section 5725.18 542
or Chapter 5729. of the Revised Code based on one or more 543
measurement periods that include the entire tax period under this 544
chapter; 545

(10) A person that solely facilitates or services one or more 546
securitizations or similar transactions for any person described 547

in division (E)(3), (5), (6), (7), (8), or (9) of this section. 548
For purposes of this division, "securitization" means transferring 549
one or more assets to one or more persons and then issuing 550
securities backed by the right to receive payment from the asset 551
or assets so transferred. 552

(11) Except as otherwise provided in this division, a 553
pre-income tax trust as defined in division (FF)(4) of section 554
5747.01 of the Revised Code and any pass-through entity of which 555
such pre-income tax trust owns or controls, directly, indirectly, 556
or constructively through related interests, more than five per 557
cent of the ownership or equity interests. If the pre-income tax 558
trust has made a qualifying pre-income tax trust election under 559
division (FF)(3) of section 5747.01 of the Revised Code, then the 560
trust and the pass-through entities of which it owns or controls, 561
directly, indirectly, or constructively through related interests, 562
more than five per cent of the ownership or equity interests, 563
shall not be excluded persons for purposes of the tax imposed 564
under section 5751.02 of the Revised Code. 565

(F) Except as otherwise provided in divisions (F)(2), (3), 566
and (4) of this section, "gross receipts" means the total amount 567
realized by a person, without deduction for the cost of goods sold 568
or other expenses incurred, that contributes to the production of 569
gross income of the person, including the fair market value of any 570
property and any services received, and any debt transferred or 571
forgiven as consideration. 572

(1) The following are examples of gross receipts: 573

(a) Amounts realized from the sale, exchange, or other 574
disposition of the taxpayer's property to or with another; 575

(b) Amounts realized from the taxpayer's performance of 576
services for another; 577

(c) Amounts realized from another's use or possession of the 578

taxpayer's property or capital;	579
(d) Any combination of the foregoing amounts.	580
(2) "Gross receipts" excludes the following amounts:	581
(a) Interest income except interest on credit sales;	582
(b) Dividends and distributions from corporations, and	583
distributive or proportionate shares of receipts and income from a	584
pass-through entity as defined under section 5733.04 of the	585
Revised Code;	586
(c) Receipts from the sale, exchange, or other disposition of	587
an asset described in section 1221 or 1231 of the Internal Revenue	588
Code, without regard to the length of time the person held the	589
asset. Notwithstanding section 1221 of the Internal Revenue Code,	590
receipts from hedging transactions also are excluded to the extent	591
the transactions are entered into primarily to protect a financial	592
position, such as managing the risk of exposure to (i) foreign	593
currency fluctuations that affect assets, liabilities, profits,	594
losses, equity, or investments in foreign operations; (ii)	595
interest rate fluctuations; or (iii) commodity price fluctuations.	596
As used in division (F)(2)(c) of this section, "hedging	597
transaction" has the same meaning as used in section 1221 of the	598
Internal Revenue Code and also includes transactions accorded	599
hedge accounting treatment under statement of financial accounting	600
standards number 133 of the financial accounting standards board.	601
For the purposes of division (F)(2)(c) of this section, the actual	602
transfer of title of real or tangible personal property to another	603
entity is not a hedging transaction.	604
(d) Proceeds received attributable to the repayment,	605
maturity, or redemption of the principal of a loan, bond, mutual	606
fund, certificate of deposit, or marketable instrument;	607
(e) The principal amount received under a repurchase	608
agreement or on account of any transaction properly characterized	609

as a loan to the person;	610
(f) Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to which Title 26, Subtitle A, Chapter 1, Subchapter (D) of the Internal Revenue Code applies;	611 612 613 614
(g) Compensation, whether current or deferred, and whether in cash or in kind, received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including reimbursements received by or for an individual for medical or education expenses, health insurance premiums, or employee expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in section 125 of the Internal Revenue Code, or any similar employee reimbursement;	615 616 617 618 619 620 621 622 623
(h) Proceeds received from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the taxpayer's treasury stock;	624 625 626
(i) Proceeds received on the account of payments from life insurance policies;	627 628
(j) Gifts or charitable contributions received, membership dues received, and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; fundraising receipts received by any person when any excess receipts are donated or used exclusively for charitable purposes; and proceeds received by a nonprofit organization including proceeds realized with regard to its unrelated business taxable income;	629 630 631 632 633 634 635 636
(k) Damages received as the result of litigation in excess of amounts that, if received without litigation, would be gross receipts;	637 638 639
(l) Property, money, and other amounts received or acquired	640

by an agent on behalf of another in excess of the agent's 641
commission, fee, or other remuneration; 642

(m) Tax refunds, other tax benefit recoveries, and 643
reimbursements for the tax imposed under this chapter made by 644
entities that are part of the same combined taxpayer or 645
consolidated elected taxpayer group, and reimbursements made by 646
entities that are not members of a combined taxpayer or 647
consolidated elected taxpayer group that are required to be made 648
for economic parity among multiple owners of an entity whose tax 649
obligation under this chapter is required to be reported and paid 650
entirely by one owner, pursuant to the requirements of sections 651
5751.011 and 5751.012 of the Revised Code; 652

(n) Pension reversions; 653

(o) Contributions to capital; 654

(p) Sales or use taxes collected as a vendor or an 655
out-of-state seller on behalf of the taxing jurisdiction from a 656
consumer or other taxes the taxpayer is required by law to collect 657
directly from a purchaser and remit to a local, state, or federal 658
tax authority; 659

(q) In the case of receipts from the sale of cigarettes or 660
tobacco products by a wholesale dealer, retail dealer, 661
distributor, manufacturer, or seller, all as defined in section 662
5743.01 of the Revised Code, an amount equal to the federal and 663
state excise taxes paid by any person on or for such cigarettes or 664
tobacco products under subtitle E of the Internal Revenue Code or 665
Chapter 5743. of the Revised Code; 666

(r) In the case of receipts from the sale of motor fuel by a 667
licensed motor fuel dealer, licensed retail dealer, or licensed 668
permissive motor fuel dealer, all as defined in section 5735.01 of 669
the Revised Code, an amount equal to federal and state excise 670
taxes paid by any person on such motor fuel under section 4081 of 671

the Internal Revenue Code or Chapter 5735. of the Revised Code; 672

(s) In the case of receipts from the sale of beer or 673
intoxicating liquor, as defined in section 4301.01 of the Revised 674
Code, by a person holding a permit issued under Chapter 4301. or 675
4303. of the Revised Code, an amount equal to federal and state 676
excise taxes paid by any person on or for such beer or 677
intoxicating liquor under subtitle E of the Internal Revenue Code 678
or Chapter 4301. or 4305. of the Revised Code; 679

(t) Receipts realized by a new motor vehicle dealer or used 680
motor vehicle dealer, as defined in section 4517.01 of the Revised 681
Code, from the sale or other transfer of a motor vehicle, as 682
defined in that section, to another motor vehicle dealer for the 683
purpose of resale by the transferee motor vehicle dealer, but only 684
if the sale or other transfer was based upon the transferee's need 685
to meet a specific customer's preference for a motor vehicle; 686

(u) Receipts from a financial institution described in 687
division (E)(3) of this section for services provided to the 688
financial institution in connection with the issuance, processing, 689
servicing, and management of loans or credit accounts, if such 690
financial institution and the recipient of such receipts have at 691
least fifty per cent of their ownership interests owned or 692
controlled, directly or constructively through related interests, 693
by common owners; 694

(v) Receipts realized from administering anti-neoplastic 695
drugs and other cancer chemotherapy, biologicals, therapeutic 696
agents, and supportive drugs in a physician's office to patients 697
with cancer; 698

(w) Funds received or used by a mortgage broker that is not a 699
dealer in intangibles, other than fees or other consideration, 700
pursuant to a table-funding mortgage loan or warehouse-lending 701
mortgage loan. Terms used in division (F)(2)(w) of this section 702

have the same meanings as in section 1322.01 of the Revised Code, 703
except "mortgage broker" means a person assisting a buyer in 704
obtaining a mortgage loan for a fee or other consideration paid by 705
the buyer or a lender, or a person engaged in table-funding or 706
warehouse-lending mortgage loans that are first lien mortgage 707
loans. 708

(x) Property, money, and other amounts received by a 709
professional employer organization, as defined in section 4125.01 710
of the Revised Code, from a client employer, as defined in that 711
section, in excess of the administrative fee charged by the 712
professional employer organization to the client employer; 713

(y) In the case of amounts retained as commissions by a 714
permit holder under Chapter 3769. of the Revised Code, an amount 715
equal to the amounts specified under that chapter that must be 716
paid to or collected by the tax commissioner as a tax and the 717
amounts specified under that chapter to be used as purse money; 718

(z) Qualifying distribution center receipts. 719

(i) For purposes of division (F)(2)(z) of this section: 720

(I) "Qualifying distribution center receipts" means receipts 721
of a supplier from qualified property that is delivered to a 722
qualified distribution center, multiplied by a quantity that 723
equals one minus the Ohio delivery percentage. 724

(II) "Qualified property" means tangible personal property 725
delivered to a qualified distribution center that is shipped to 726
that qualified distribution center solely for further shipping by 727
the qualified distribution center to another location in this 728
state or elsewhere. "Further shipping" includes storing and 729
repackaging such property into smaller or larger bundles, so long 730
as such property is not subject to further manufacturing or 731
processing. 732

(III) "Qualified distribution center" means a warehouse or 733

other similar facility in this state that, for the qualifying year, is operated by a person that is not part of a combined taxpayer group and that has a qualifying certificate. However, all warehouses or other similar facilities that are operated by persons in the same taxpayer group and that are located within one mile of each other shall be treated as one qualified distribution center.

(IV) "Qualifying year" means the calendar year to which the qualifying certificate applies.

(V) "Qualifying period" means the period of the first day of July of the second year preceding the qualifying year through the thirtieth day of June of the year preceding the qualifying year.

(VI) "Qualifying certificate" means an annual application approved by the tax commissioner from an operator of a distribution center that has filed an application as prescribed by the commissioner and paid the annual fee for the qualifying certificate on or before the first day of September prior to the qualifying year or forty-five days after the opening of the distribution center, whichever is later. The application and annual fee shall be filed and paid for each qualified distribution center.

The applicant must substantiate to the commissioner's satisfaction that, for the qualifying period, all persons operating the distribution center have more than fifty per cent of the cost of the qualified property shipped to a location such that it would be situated outside this state under the provisions of division (E) of section 5751.033 of the Revised Code. The applicant must also substantiate that the distribution center cumulatively had costs from its suppliers equal to or exceeding five hundred million dollars during the qualifying period. (For purposes of division (F)(2)(z)(i)(VI) of this section, "supplier" excludes any person that is part of the consolidated elected

taxpayer group, if applicable, of the operator of the qualified 766
distribution center.) The commissioner may require the applicant 767
to have an independent certified public accountant certify that 768
the calculation of the minimum thresholds required for a qualified 769
distribution center by the operator of a distribution center has 770
been made in accordance with generally accepted accounting 771
principles. The commissioner shall issue or deny the issuance of a 772
certificate within sixty days after the receipt of the 773
application. A denial is subject to appeal under section 5717.02 774
of the Revised Code. If the operator files a timely appeal under 775
section 5717.02 of the Revised Code, the operator shall be granted 776
a qualifying certificate, provided that the operator is liable for 777
any tax, interest, or penalty upon amounts claimed as qualifying 778
distribution center receipts, other than those receipts exempt 779
under division (C)(1) of section 5751.011 of the Revised Code, 780
that would have otherwise not been owed by its suppliers if the 781
qualifying certificate was valid. 782

(VII) "Ohio delivery percentage" means the proportion of the 783
total property delivered to a destination inside Ohio from the 784
qualified distribution center during the qualifying period 785
compared with total deliveries from such distribution center 786
everywhere during the qualifying period. 787

(ii) If the distribution center is new and was not open for 788
the entire qualifying period, the operator of the distribution 789
center may request that the commissioner grant a qualifying 790
certificate. If the certificate is granted and it is later 791
determined that more than fifty per cent of the qualified property 792
during that year was not shipped to a location such that it would 793
be situated outside of this state under the provisions of division 794
(E) of section 5751.033 of the Revised Code or if it is later 795
determined that the person that operates the distribution center 796
had average monthly costs from its suppliers of less than forty 797

million dollars during that year, then the operator of the 798
distribution center shall be liable for any tax, interest, or 799
penalty upon amounts claimed as qualifying distribution center 800
receipts, other than those receipts exempt under division (C)(1) 801
of section 5751.011 of the Revised Code, that would have not 802
otherwise been owed by its suppliers during the qualifying year if 803
the qualifying certificate was valid. (For purposes of division 804
(F)(2)(z)(ii) of this section, "supplier" excludes any person that 805
is part of the consolidated elected taxpayer group, if applicable, 806
of the operator of the qualified distribution center.) 807

(iii) When filing an application for a qualifying certificate 808
under division (F)(2)(z)(i)(VI) of this section, the operator of a 809
qualified distribution center also shall provide documentation, as 810
the commissioner requires, for the commissioner to ascertain the 811
Ohio delivery percentage. The commissioner, upon issuing the 812
qualifying certificate, also shall certify the Ohio delivery 813
percentage. The operator of the qualified distribution center may 814
appeal the commissioner's certification of the Ohio delivery 815
percentage in the same manner as an appeal is taken from the 816
denial of a qualifying certificate under division (F)(2)(z)(i)(VI) 817
of this section. 818

Within thirty days after all appeals have been exhausted, the 819
operator of the qualified distribution center shall notify the 820
affected suppliers of qualified property that such suppliers are 821
required to file, within sixty days after receiving notice from 822
the operator of the qualified distribution center, amended reports 823
for the impacted calendar quarter or quarters or calendar year, 824
whichever the case may be. Any additional tax liability or tax 825
overpayment shall be subject to interest but shall not be subject 826
to the imposition of any penalty so long as the amended returns 827
are timely filed. The supplier of tangible personal property 828
delivered to the qualified distribution center shall include in 829

its report of taxable gross receipts the receipts from the total 830
sales of property delivered to the qualified distribution center 831
for the calendar quarter or calendar year, whichever the case may 832
be, multiplied by the Ohio delivery percentage for the qualifying 833
year. Nothing in division (F)(2)(z)(iii) of this section shall be 834
construed as imposing liability on the operator of a qualified 835
distribution center for the tax imposed by this chapter arising 836
from any change to the Ohio delivery percentage. 837

(iv) In the case where the distribution center is new and not 838
open for the entire qualifying period, the operator shall make a 839
good faith estimate of an Ohio delivery percentage for use by 840
suppliers in their reports of taxable gross receipts for the 841
remainder of the qualifying period. The operator of the facility 842
shall disclose to the suppliers that such Ohio delivery percentage 843
is an estimate and is subject to recalculation. By the due date of 844
the next application for a qualifying certificate, the operator 845
shall determine the actual Ohio delivery percentage for the 846
estimated qualifying period and proceed as provided in division 847
(F)(2)(z)(iii) of this section with respect to the calculation and 848
recalculation of the Ohio delivery percentage. The supplier is 849
required to file, within sixty days after receiving notice from 850
the operator of the qualified distribution center, amended reports 851
for the impacted calendar quarter or quarters or calendar year, 852
whichever the case may be. Any additional tax liability or tax 853
overpayment shall be subject to interest but shall not be subject 854
to the imposition of any penalty so long as the amended returns 855
are timely filed. 856

(v) Qualifying certificates and Ohio delivery percentages 857
issued by the commissioner shall be open to public inspection and 858
shall be timely published by the commissioner. A supplier relying 859
in good faith on a certificate issued under this division shall 860
not be subject to tax on the qualifying distribution center 861

receipts under division (F)(2)(z) of this section. A person 862
receiving a qualifying certificate is responsible for paying the 863
tax, interest, and penalty upon amounts claimed as qualifying 864
distribution center receipts that would not otherwise have been 865
owed by the supplier if the qualifying certificate were available 866
when it is later determined that the qualifying certificate should 867
not have been issued because the statutory requirements were in 868
fact not met. 869

(vi) The annual fee for a qualifying certificate shall be one 870
hundred thousand dollars for each qualified distribution center. 871
If a qualifying certificate is not issued, the annual fee is 872
subject to refund after the exhaustion of all appeals provided for 873
in division (F)(2)(z)(i)(VI) of this section. The fee imposed 874
under this division may be assessed in the same manner as the tax 875
imposed under this chapter. The first one hundred thousand dollars 876
of the annual application fees collected each calendar year shall 877
be credited to the commercial activity tax administrative fund. 878
The remainder of the annual application fees collected shall be 879
distributed in the same manner required under section 5751.20 of 880
the Revised Code. 881

(vii) The tax commissioner may require that adequate security 882
be posted by the operator of the distribution center on appeal 883
when the commissioner disagrees that the applicant has met the 884
minimum thresholds for a qualified distribution center as set 885
forth in divisions (F)(2)(z)(i)(VI) and (F)(2)(z)(ii) of this 886
section. 887

(aa) Any receipts for which the tax imposed by this chapter 888
is prohibited by the Constitution or laws of the United States or 889
the Constitution of Ohio. 890

(3) In the case of a taxpayer when acting as a real estate 891
broker, "gross receipts" includes only the portion of any fee for 892
the service of a real estate broker, or service of a real estate 893

salesperson associated with that broker, that is retained by the 894
broker and not paid to an associated real estate salesperson or 895
another real estate broker. For the purposes of this division, 896
"real estate broker" and "real estate salesperson" have the same 897
meanings as in section 4735.01 of the Revised Code. 898

(4) A taxpayer's method of accounting for gross receipts for 899
a tax period shall be the same as the taxpayer's method of 900
accounting for federal income tax purposes for the taxpayer's 901
federal taxable year that includes the tax period. If a taxpayer's 902
method of accounting for federal income tax purposes changes, its 903
method of accounting for gross receipts under this chapter shall 904
be changed accordingly. 905

In calculating gross receipts, the following shall be 906
deducted to the extent included as a gross receipt in the current 907
tax period or reported as taxable gross receipts in a prior tax 908
period: 909

(a) Cash discounts allowed and taken; 910

(b) Returns and allowances; 911

(c) Bad debts. For the purposes of this division, "bad debts" 912
mean any debts that have become worthless or uncollectible between 913
the preceding and current quarterly tax payment periods, have been 914
uncollected for at least six months, and may be claimed as a 915
deduction under section 166 of the Internal Revenue Code and the 916
regulations adopted pursuant thereto, or that could be claimed as 917
such if the taxpayer kept its accounts on the accrual basis. "Bad 918
debts" does not include uncollectible amounts on property that 919
remains in the possession of the taxpayer until the full purchase 920
price is paid, expenses in attempting to collect any account 921
receivable or for any portion of the debt recovered, and 922
repossessed property; 923

(d) Any amount realized from the sale of an account 924

receivable but only to the extent the receipts from the underlying 925
transaction giving rise to the account receivable were included in 926
the gross receipts of the taxpayer. 927

(G) "Taxable gross receipts" means gross receipts situated to 928
this state under section 5751.033 of the Revised Code. 929

(H) A person has "substantial nexus with this state" if any 930
of the following applies. The person: 931

(1) Owns or uses a part or all of its capital in this state; 932

(2) Holds a certificate of compliance with the laws of this 933
state authorizing the person to do business in this state; 934

(3) Has bright-line presence in this state; 935

(4) Otherwise has nexus with this state to an extent that the 936
person can be required to remit the tax imposed under this chapter 937
under the Constitution of the United States. 938

(I) A person has "bright-line presence" in this state for a 939
reporting period and for the remaining portion of the calendar 940
year if any of the following applies. The person: 941

(1) Has at any time during the calendar year property in this 942
state with an aggregate value of at least fifty thousand dollars. 943
For the purpose of division (I)(1) of this section, owned property 944
is valued at original cost and rented property is valued at eight 945
times the net annual rental charge. 946

(2) Has during the calendar year payroll in this state of at 947
least fifty thousand dollars. Payroll in this state includes all 948
of the following: 949

(a) Any amount subject to withholding by the person under 950
section 5747.06 of the Revised Code; 951

(b) Any other amount the person pays as compensation to an 952
individual under the supervision or control of the person for work 953
done in this state; and 954

(c) Any amount the person pays for services performed in this state on its behalf by another.	955 956
(3) Has during the calendar year taxable gross receipts of at least five hundred thousand dollars.	957 958
(4) Has at any time during the calendar year within this state at least twenty-five per cent of the person's total property, total payroll, or total gross receipts.	959 960 961
(5) Is domiciled in this state as an individual or for corporate, commercial, or other business purposes.	962 963
(J) "Tangible personal property" has the same meaning as in section 5739.01 of the Revised Code.	964 965
(K) "Internal Revenue Code" means the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C. 1, as amended. Any term used in this chapter that is not otherwise defined has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the Internal Revenue Code includes other laws of the United States relating to federal income taxes.	966 967 968 969 970 971 972 973
(L) "Calendar quarter" means a three-month period ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, or the thirty-first day of December.	974 975 976
(M) "Tax period" means the calendar quarter or calendar year on the basis of which a taxpayer is required to pay the tax imposed under this chapter.	977 978 979
(N) "Calendar year taxpayer" means a taxpayer for which the tax period is a calendar year.	980 981
(O) "Calendar quarter taxpayer" means a taxpayer for which the tax period is a calendar quarter.	982 983
(P) "Agent" means a person authorized by another person to	984

act on its behalf to undertake a transaction for the other,	985
including any of the following:	986
(1) A person receiving a fee to sell financial instruments;	987
(2) A person retaining only a commission from a transaction	988
with the other proceeds from the transaction being remitted to	989
another person;	990
(3) A person issuing licenses and permits under section	991
1533.13 of the Revised Code;	992
(4) A lottery sales agent holding a valid license issued	993
under section 3770.05 of the Revised Code;	994
(5) A person acting as an agent of the division of liquor	995
control under section 4301.17 of the Revised Code.	996
(Q) "Received" includes amounts accrued under the accrual	997
method of accounting.	998
<u>(R) "Lake Erie wind energy developer" means an entity that</u>	999
<u>holds a lease for the bed of Lake Erie for the purpose of wind</u>	1000
<u>energy development as provided for in section 1506.111 of the</u>	1001
<u>Revised Code.</u>	1002
Sec. 5751.20. (A) As used in sections 5751.20 to 5751.22 of	1003
the Revised Code:	1004
(1) "School district," "joint vocational school district,"	1005
"local taxing unit," "recognized valuation," "fixed-rate levy,"	1006
and "fixed-sum levy" have the same meanings as used in section	1007
5727.84 of the Revised Code.	1008
(2) "State education aid" for a school district means the sum	1009
of state aid amounts computed for the district under division (A)	1010
of section 3317.022 of the Revised Code, including the amounts	1011
calculated under sections 3317.029 and 3317.0217 of the Revised	1012
Code; divisions (C)(1), (C)(4), (D), (E), and (F) of section	1013

3317.022; divisions (B), (C), and (D) of section 3317.023; 1014
divisions (L) and (N) of section 3317.024; section 3317.0216; and 1015
any unit payments for gifted student services paid under sections 1016
3317.05, 3317.052, and 3317.053 of the Revised Code; except that, 1017
for fiscal years 2008 and 2009, the amount computed for the 1018
district under Section 269.20.80 of H.B. 119 of the 127th general 1019
assembly and as that section subsequently may be amended shall be 1020
substituted for the amount computed under division (D) of section 1021
3317.022 of the Revised Code, and the amount computed under 1022
Section 269.30.80 of H.B. 119 of the 127th general assembly and as 1023
that section subsequently may be amended shall be included. 1024

(3) "State education aid" for a joint vocational school 1025
district means the sum of the state aid computed for the district 1026
under division (N) of section 3317.024 and section 3317.16 of the 1027
Revised Code, except that, for fiscal years 2008 and 2009, the 1028
amount computed under Section 269.30.80 of H.B. 119 of the 127th 1029
general assembly and as that section subsequently may be amended 1030
shall be included. 1031

(4) "State education aid offset" means the amount determined 1032
for each school district or joint vocational school district under 1033
division (A)(1) of section 5751.21 of the Revised Code. 1034

(5) "Machinery and equipment property tax value loss" means 1035
the amount determined under division (C)(1) of this section. 1036

(6) "Inventory property tax value loss" means the amount 1037
determined under division (C)(2) of this section. 1038

(7) "Furniture and fixtures property tax value loss" means 1039
the amount determined under division (C)(3) of this section. 1040

(8) "Machinery and equipment fixed-rate levy loss" means the 1041
amount determined under division (D)(1) of this section. 1042

(9) "Inventory fixed-rate levy loss" means the amount 1043
determined under division (D)(2) of this section. 1044

- (10) "Furniture and fixtures fixed-rate levy loss" means the amount determined under division (D)(3) of this section. 1045
1046
- (11) "Total fixed-rate levy loss" means the sum of the machinery and equipment fixed-rate levy loss, the inventory fixed-rate levy loss, the furniture and fixtures fixed-rate levy loss, and the telephone company fixed-rate levy loss. 1047
1048
1049
1050
- (12) "Fixed-sum levy loss" means the amount determined under division (E) of this section. 1051
1052
- (13) "Machinery and equipment" means personal property subject to the assessment rate specified in division (F) of section 5711.22 of the Revised Code. 1053
1054
1055
- (14) "Inventory" means personal property subject to the assessment rate specified in division (E) of section 5711.22 of the Revised Code. 1056
1057
1058
- (15) "Furniture and fixtures" means personal property subject to the assessment rate specified in division (G) of section 5711.22 of the Revised Code. 1059
1060
1061
- (16) "Qualifying levies" are levies in effect for tax year 2004 or applicable to tax year 2005 or approved at an election conducted before September 1, 2005. For the purpose of determining the rate of a qualifying levy authorized by section 5705.212 or 5705.213 of the Revised Code, the rate shall be the rate that would be in effect for tax year 2010. 1062
1063
1064
1065
1066
1067
- (17) "Telephone property" means tangible personal property of a telephone, telegraph, or interexchange telecommunications company subject to an assessment rate specified in section 5727.111 of the Revised Code in tax year 2004. 1068
1069
1070
1071
- (18) "Telephone property tax value loss" means the amount determined under division (C)(4) of this section. 1072
1073
- (19) "Telephone property fixed-rate levy loss" means the 1074

amount determined under division (D)(4) of this section. 1075

(B)(1) The commercial activities tax receipts fund is hereby 1076
 created in the state treasury and shall consist of money arising 1077
 from the tax imposed under this chapter. ~~All~~ Except as provided in 1078
division (B)(2) of this section, all money in that fund shall be 1079
 credited for each fiscal year in the following percentages to the 1080
 general revenue fund, to the school district tangible property tax 1081
 replacement fund, which is hereby created in the state treasury 1082
 for the purpose of making the payments described in section 1083
 5751.21 of the Revised Code, and to the local government tangible 1084
 property tax replacement fund, which is hereby created in the 1085
 state treasury for the purpose of making the payments described in 1086
 section 5751.22 of the Revised Code, in the following percentages: 1087

Fiscal year	General Revenue Fund	School District Tangible Property Tax Replacement Fund	Local Government Tangible Property Tax Replacement Fund	
2006	67.7%	22.6%	9.7%	1090
2007	0%	70.0%	30.0%	1091
2008	0%	70.0%	30.0%	1092
2009	0%	70.0%	30.0%	1093
2010	0%	70.0%	30.0%	1094
2011	0%	70.0%	30.0%	1095
2012	5.3%	70.0%	24.7%	1096
2013	10.6%	70.0%	19.4%	1097
2014	14.1%	70.0%	15.9%	1098
2015	17.6%	70.0%	12.4%	1099
2016	21.1%	70.0%	8.9%	1100
2017	24.6%	70.0%	5.4%	1101
2018	28.1%	70.0%	1.9%	1102
2019 and	30%	70%	0%	1103

thereafter

(2) One hundred per cent of all commercial activity tax receipts collected from a Lake Erie wind energy developer shall be divided equally among and credited to the state special revenue funds from which appropriations were made to the department of natural resources in fiscal year 2008.

(C) Not later than September 15, 2005, the tax commissioner shall determine for each school district, joint vocational school district, and local taxing unit its machinery and equipment, inventory property, furniture and fixtures property, and telephone property tax value losses, which are the applicable amounts described in divisions (C)(1), (2), (3), and (4) of this section, except as provided in division (C)(5) of this section:

(1) Machinery and equipment property tax value loss is the taxable value of machinery and equipment property as reported by taxpayers for tax year 2004 multiplied by:

(a) For tax year 2006, thirty-three and eight-tenths per cent;

(b) For tax year 2007, sixty-one and three-tenths per cent;

(c) For tax year 2008, eighty-three per cent;

(d) For tax year 2009 and thereafter, one hundred per cent.

(2) Inventory property tax value loss is the taxable value of inventory property as reported by taxpayers for tax year 2004 multiplied by:

(a) For tax year 2006, a fraction, the numerator of which is five and three-fourths and the denominator of which is twenty-three;

(b) For tax year 2007, a fraction, the numerator of which is nine and one-half and the denominator of which is twenty-three;

(c) For tax year 2008, a fraction, the numerator of which is

thirteen and one-fourth and the denominator of which is 1133
twenty-three; 1134

(d) For tax year 2009 and thereafter a fraction, the 1135
numerator of which is seventeen and the denominator of which is 1136
twenty-three. 1137

(3) Furniture and fixtures property tax value loss is the 1138
taxable value of furniture and fixture property as reported by 1139
taxpayers for tax year 2004 multiplied by: 1140

(a) For tax year 2006, twenty-five per cent; 1141

(b) For tax year 2007, fifty per cent; 1142

(c) For tax year 2008, seventy-five per cent; 1143

(d) For tax year 2009 and thereafter, one hundred per cent. 1144

The taxable value of property reported by taxpayers used in 1145
divisions (C)(1), (2), and (3) of this section shall be such 1146
values as determined to be final by the tax commissioner as of 1147
August 31, 2005. Such determinations shall be final except for any 1148
correction of a clerical error that was made prior to August 31, 1149
2005, by the tax commissioner. 1150

(4) Telephone property tax value loss is the taxable value of 1151
telephone property as taxpayers would have reported that property 1152
for tax year 2004 if the assessment rate for all telephone 1153
property for that year were twenty-five per cent, multiplied by: 1154

(a) For tax year 2006, zero per cent; 1155

(b) For tax year 2007, zero per cent; 1156

(c) For tax year 2008, zero per cent; 1157

(d) For tax year 2009, sixty per cent; 1158

(e) For tax year 2010, eighty per cent; 1159

(f) For tax year 2011 and thereafter, one hundred per cent. 1160

(5) Division (C)(5) of this section applies to any school 1161
district, joint vocational school district, or local taxing unit 1162
in a county in which is located a facility currently or formerly 1163
devoted to the enrichment or commercialization of uranium or 1164
uranium products, and for which the total taxable value of 1165
property listed on the general tax list of personal property for 1166
any tax year from tax year 2001 to tax year 2004 was fifty per 1167
cent or less of the taxable value of such property listed on the 1168
general tax list of personal property for the next preceding tax 1169
year. 1170

In computing the fixed-rate levy losses under divisions 1171
(D)(1), (2), and (3) of this section for any school district, 1172
joint vocational school district, or local taxing unit to which 1173
division (C)(5) of this section applies, the taxable value of such 1174
property as listed on the general tax list of personal property 1175
for tax year 2000 shall be substituted for the taxable value of 1176
such property as reported by taxpayers for tax year 2004, in the 1177
taxing district containing the uranium facility, if the taxable 1178
value listed for tax year 2000 is greater than the taxable value 1179
reported by taxpayers for tax year 2004. For the purpose of making 1180
the computations under divisions (D)(1), (2), and (3) of this 1181
section, the tax year 2000 valuation is to be allocated to 1182
machinery and equipment, inventory, and furniture and fixtures 1183
property in the same proportions as the tax year 2004 values. For 1184
the purpose of the calculations in division (A) of section 5751.21 1185
of the Revised Code, the tax year 2004 taxable values shall be 1186
used. 1187

To facilitate the calculations required under division (C) of 1188
this section, the county auditor, upon request from the tax 1189
commissioner, shall provide by August 1, 2005, the values of 1190
machinery and equipment, inventory, and furniture and fixtures for 1191
all single-county personal property taxpayers for tax year 2004. 1192

(D) Not later than September 15, 2005, the tax commissioner shall determine for each tax year from 2006 through 2009 for each school district, joint vocational school district, and local taxing unit its machinery and equipment, inventory, and furniture and fixtures fixed-rate levy losses, and for each tax year from 2006 through 2011 its telephone property fixed-rate levy loss, which are the applicable amounts described in divisions (D)(1), (2), (3), and (4) of this section:

(1) The machinery and equipment fixed-rate levy loss is the machinery and equipment property tax value loss multiplied by the sum of the tax rates of fixed-rate qualifying levies.

(2) The inventory fixed-rate loss is the inventory property tax value loss multiplied by the sum of the tax rates of fixed-rate qualifying levies.

(3) The furniture and fixtures fixed-rate levy loss is the furniture and fixture property tax value loss multiplied by the sum of the tax rates of fixed-rate qualifying levies.

(4) The telephone property fixed-rate levy loss is the telephone property tax value loss multiplied by the sum of the tax rates of fixed-rate qualifying levies.

(E) Not later than September 15, 2005, the tax commissioner shall determine for each school district, joint vocational school district, and local taxing unit its fixed-sum levy loss. The fixed-sum levy loss is the amount obtained by subtracting the amount described in division (E)(2) of this section from the amount described in division (E)(1) of this section:

(1) The sum of the machinery and equipment property tax value loss, the inventory property tax value loss, and the furniture and fixtures property tax value loss, and, for 2008 through 2017 the telephone property tax value loss of the district or unit multiplied by the sum of the fixed-sum tax rates of qualifying

levies. For 2006 through 2010, this computation shall include all 1224
qualifying levies remaining in effect for the current tax year and 1225
any school district levies imposed under section 5705.194 or 1226
5705.213 of the Revised Code that are qualifying levies not 1227
remaining in effect for the current year. For 2011 through 2017 in 1228
the case of school district levies imposed under section 5705.194 1229
or 5705.213 of the Revised Code and for all years after 2010 in 1230
the case of other fixed-sum levies, this computation shall include 1231
only qualifying levies remaining in effect for the current year. 1232
For purposes of this computation, a qualifying school district 1233
levy imposed under section 5705.194 or 5705.213 of the Revised 1234
Code remains in effect in a year after 2010 only if, for that 1235
year, the board of education levies a school district levy imposed 1236
under section 5705.194 or 5705.213 of the Revised Code for an 1237
annual sum at least equal to the annual sum levied by the board in 1238
tax year 2004 less the amount of the payment certified under this 1239
division for 2006. 1240

(2) The total taxable value in tax year 2004 less the sum of 1241
the machinery and equipment, inventory, furniture and fixtures, 1242
and telephone property tax value losses in each school district, 1243
joint vocational school district, and local taxing unit multiplied 1244
by one-half of one mill per dollar. 1245

(3) For the calculations in divisions (E)(1) and (2) of this 1246
section, the tax value losses are those that would be calculated 1247
for tax year 2009 under divisions (C)(1), (2), and (3) of this 1248
section and for tax year 2011 under division (C)(4) of this 1249
section. 1250

(4) To facilitate the calculation under divisions (D) and (E) 1251
of this section, not later than September 1, 2005, any school 1252
district, joint vocational school district, or local taxing unit 1253
that has a qualifying levy that was approved at an election 1254
conducted during 2005 before September 1, 2005, shall certify to 1255

the tax commissioner a copy of the county auditor's certificate of 1256
estimated property tax millage for such levy as required under 1257
division (B) of section 5705.03 of the Revised Code, which is the 1258
rate that shall be used in the calculations under such divisions. 1259

If the amount determined under division (E) of this section 1260
for any school district, joint vocational school district, or 1261
local taxing unit is greater than zero, that amount shall equal 1262
the reimbursement to be paid pursuant to division (E) of section 1263
5751.21 or division (A)(3) of section 5751.22 of the Revised Code, 1264
and the one-half of one mill that is subtracted under division 1265
(E)(2) of this section shall be apportioned among all contributing 1266
fixed-sum levies in the proportion that each levy bears to the sum 1267
of all fixed-sum levies within each school district, joint 1268
vocational school district, or local taxing unit. 1269

(F) Not later than October 1, 2005, the tax commissioner 1270
shall certify to the department of education for every school 1271
district and joint vocational school district the machinery and 1272
equipment, inventory, furniture and fixtures, and telephone 1273
property tax value losses determined under division (C) of this 1274
section, the machinery and equipment, inventory, furniture and 1275
fixtures, and telephone fixed-rate levy losses determined under 1276
division (D) of this section, and the fixed-sum levy losses 1277
calculated under division (E) of this section. The calculations 1278
under divisions (D) and (E) of this section shall separately 1279
display the levy loss for each levy eligible for reimbursement. 1280

(G) Not later than October 1, 2005, the tax commissioner 1281
shall certify the amount of the fixed-sum levy losses to the 1282
county auditor of each county in which a school district, joint 1283
vocational school district, or local taxing unit with a fixed-sum 1284
levy loss reimbursement has territory. 1285

Section 2. That existing sections 303.213, 519.213, 713.081, 1286
1506.11, 4906.13, 4906.20, 4906.98, 5751.01, and 5751.20 of the 1287

Revised Code are hereby repealed.

1288